

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. ) No. 2:20 CV 486  
 )  
HZ OPS HOLDINGS, INC d/b/a POPEYES, )  
 )  
Defendant. )

CONSENT DECREE

The Equal Employment Opportunity Commission (“Commission” or “EEOC”) instituted this action under the authority granted by Section 107 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101-17 (“ADA”). The Commission’s action was brought to correct unlawful hiring practices on the basis of disability which violate the ADA. Specifically, the Commission alleged in its Complaint that HZ Ops Holdings, Inc. (“HZ”) rescinded Nicole Nash’s job offer in or about August 2019 because of disability. The Commission and HZ stipulate to the jurisdiction of the Court over the parties and the subject matter of this action.

The parties have advised the Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, based on the record as a whole, that (1) the Court has jurisdiction over the parties and the subject matter of this action,

(2) the purpose and provisions of the ADA will be promoted and effectuated by the entry of this consent decree, and (3) this consent decree resolves all the matters in controversy between the parties as provided in paragraphs 1 through 30 below. It is therefore **ORDERED, ADJUDGED, AND DECREED** as follows:

### **GENERAL PROVISIONS**

1. HZ, its officers, agents, successors and other persons in active concert or participation with HZ in its business operations, are permanently enjoined from:

- a. Rescinding job offers or failing to hire a qualified cognitively impaired applicant because of that individual's disability or the need for an accommodation;
- b. Denying the reasonable accommodation of a job coach; and
- c. Discriminating or retaliating in any way against any person because of opposition to a practice made unlawful under the ADA and the other federal anti-discrimination laws enforced by the EEOC or because of the filing of a charge, the giving of testimony, assistance or participation in any manner in an investigation, proceeding or hearing under anti-discrimination laws.

### **TERM, SCOPE, AND ISSUES RESOLVED**

2. This decree is effective for five years from the date of entry by the Court.

3. This decree unless otherwise specified applies to all of HZ's restaurants and all its managers, supervisors, agents, human resource personnel, and any other employees who play a role in hiring.

4. Nothing in this decree precludes EEOC from filing lawsuits based on charges not resolved by this decree.

#### **EMPLOYMENT PRACTICES**

##### **Training:**

5. No more than 90 days from the effective date of this decree as defined in paragraph 2 above, HZ will train all store and district managers, for no less than 1 hour on:

- a. ADA's prohibitions against disability-based discrimination in hiring, terms and conditions of employment, and retaliation, including topics on reasonable accommodation and the interactive process; and
- b. the kind of conduct which may constitute unlawful disability-based discrimination.

For the duration of this consent decree, all District and Store Managers shall receive the above-described training before they play any role in hiring and no later than 30-days after they are hired or placed in a position that requires them to play any role in hiring. No less than 30 days before the training, HZ will provide the training outline to EEOC along with handouts/presentation materials. EEOC may provide input.

6. Should HZ become aware of a need for accommodation(s) for any intellectually or developmentally disabled employee or should any employee express to HZ the desire or need for a reasonable accommodation, whether or not the employee

uses the words “reasonable accommodation,” HZ must make an individualized assessment of the employee’s need. If HZ and the individual fail to reach a mutually satisfactory accommodation, HZ must seek a third-party ADA consultant’s advice and participation in the interactive process to determine an appropriate reasonable accommodation. During the effective duration of this consent decree, HZ must report each requested accommodation, HZ’s assessment, and all accommodations considered, granted, or denied to the EEOC within 10 business days of the request. If the requested accommodation is denied, HZ must also report to the EEOC all reasons for the denial, including, when appropriate, how the accommodation would have created an undue hardship to HZ’s business operations or posed a safety issue. Reports made pursuant to this paragraph must be sent to Indianapolis District Regional Attorney, Kenneth L. Bird, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204 and via e-mail to [monitoring-eeoc-ndo@eeoc.gov](mailto:monitoring-eeoc-ndo@eeoc.gov).

#### **MONETARY RELIEF**

7. HZ must pay a total of \$30,000.00 to charging party Nicole Nash. The total amount includes \$819.00 in back pay and \$73.00 in pecuniary compensatory damages. HZ is responsible for paying its share of all applicable payroll taxes on the back pay. HZ may not deduct from back pay the employer’s share of any costs, taxes, or social security required by law to be paid by HZ. HZ shall issue a W-2 for payment of back wages showing all withholdings required by law.

The total amount also includes \$29,108.00 in compensatory damages. There shall be no tax withholdings or deductions from compensatory damages. HZ must issue a form 1099 to Nicole Nash for compensatory damages.

**Payment:**

8. All payments must be made by separate checks and made payable to Nicole Nash, or to her heirs or assigns in the event of death.
9. Within 30 days from the entry of this decree, EEOC must provide HZ with an executed IRS W-4 form for Nicole Nash.
10. Within 14 days of the EEOC providing an executed W-4 form for Nicole Nash, HZ must mail separate settlement checks for backpay (\$819.00), pecuniary damages (\$73.00), and compensatory damages (\$29,108.00) to Nicole Nash via certified mail to an address provided by the EEOC. The backpay check must be accompanied by a statement detailing all deductions.
11. Within ten business days after payments are mailed to Nicole Nash, HZ must submit a copy of the checks issued and proof of delivery (a signed certified mail receipt) to the EEOC in care of the EEOC's Regional Attorney for the Indianapolis District, Kenneth L. Bird, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204 and via e-mail to [monitoring-eeoc-indo@eeoc.gov](mailto:monitoring-eeoc-indo@eeoc.gov).

## **HIRING PRACTICES**

12. HZ must provide Goodwill Industries of Michiana, Inc.'s Ability First Director (574-472-7300) 72-hour written notice before filling any job vacancies in Northern Indiana and provide job descriptions for each position.

13. HZ may not make hiring decisions until it has interviewed and, if applicable, engaged in the interactive dialogue concerning any requested accommodation for any applicants referred pursuant to paragraph 12.

14. As provided in paragraphs 21 and 22, HZ must report to the EEOC on all applicants referred pursuant to paragraph 12 and any other non-referred applicant HZ who has the need for an accommodation, including:

- a. The name and contact address and telephone number of each applicant;
- b. A description of all accommodations requested, if any;
- c. Whether the accommodation was granted and any reasons for denial; and
- d. Whether the applicant was hired.

15. HZ within ten days of the effective date of this decree, must provide Nicole Nash a letter of apology (attached as Exhibit A to this decree) for not allowing her to work at its restaurant.

## **DISSEMINATION OF DECREE AND NOTICE POSTING**

16. Within ten business days of entry of this consent decree, HZ must provide a copy of this decree to all current managers, supervisors, officers, and agents whose duties might reasonably include compliance with any provision of this decree. HZ

must also provide within five business days of their retention a copy of this decree to any individual or entity retained to perform work required under this consent decree. HZ must provide, within five business days of their hire, a copy of this decree to all new managers hired during the term of this decree who have such duties.

17. Within ten business days after the Court's entry of this decree, HZ must post in a conspicuous place frequented by applicants for positions at HZ's Griffith, Indiana restaurant, as well as on any store website, the Notice attached as Exhibit B to this decree. The Notice must be of the same type, style, and size as set forth in Exhibit A. The Notice must remain posted for the duration of this decree. If the Notice becomes defaced or illegible, HZ must replace it with a clean copy. HZ must certify to the EEOC in writing within 15 days of entry of this decree that it has properly posted the Notice and must provide recertification in each of the annual reports required under the Reporting provisions of this consent decree. Send written certification to the EEOC in care of the EEOC's Regional Attorney for the Indianapolis District, Kenneth L. Bird, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204 and via e-mail to [monitoring-eeoc-ndo@eeoc.gov](mailto:monitoring-eeoc-ndo@eeoc.gov).

### **MONITORING PROVISIONS**

18. The EEOC, its agents and employees in their discretion have the legal authority to enter HZ's Griffith, Indiana restaurant, with reasonable advance notice to HZ, and conduct an on-site inspection to ensure compliance with the ADA and any of the terms of this consent decree.

19. Such inspections may, at the discretion of the EEOC, include

access to all documents for the purposes of inspection and duplication, interviews or depositions of any person, and inspection of any area within the facility.

20. The EEOC also has the legal authority to require appearance and testimony of HZ's personnel (at reasonable times and locations) at interviews or depositions and production of relevant documents to ensure compliance with the ADA and any of the terms of this consent decree.

#### **INITIAL AND ANNUAL REPORTING**

21. Within 90 days of compliance with paragraphs 5, 15, and 16, HZ must provide written certification of compliance to Indianapolis District Regional Attorney, Kenneth L. Bird, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204 and via e-mail to [monitoring-eeoc-indo@eeoc.gov](mailto:monitoring-eeoc-indo@eeoc.gov).

22. HZ must provide annual reports which confirm continued compliance with training (paragraph 5), applicant referrals and accommodations (paragraphs 12, 13 and 14) and notice postings (paragraph 17), the first due twelve months following the effective date of this decree as described in paragraph 2. The final annual report is due no less than 60 days before the expiration of this decree. These annual reports must be sent to EEOC Regional Attorney, Kenneth L. Bird, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204 and also sent via e-mail to [monitoring-eeoc-indo@eeoc.gov](mailto:monitoring-eeoc-indo@eeoc.gov).

**RETENTION OF JURISDICTION/ENFORCEMENT OF DECREE**

23. This consent decree is binding on HZ and its successors. No transfer of ownership or operation of HZ's business relieves HZ of its obligation to ensure that the terms of this decree are implemented.

24. Should transfer of ownership or operation of HZ's businesses occur, at least 30 days before such transfer, HZ must provide a copy of this consent decree to the proposed transferee and simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the EEOC. Any transfer of ownership or operation of the business without providing the copy of the decree and providing notice as specified in this paragraph constitutes a violation of this decree.

25. This Court retains jurisdiction to enforce this consent decree and has all available powers to enforce this decree, including monetary sanctions and injunctive relief.

26. The EEOC may petition this Court for compliance with this decree at any time during which this Court maintains jurisdiction over this action. Should the Court determine that HZ has not complied with this decree, it may provide appropriate relief, including monetary sanctions and extension of this decree.

27. If the EEOC moves to enforce the decree, and the Court determines that HZ has not complied with this decree and orders relief, HZ must pay the EEOC's costs and reasonable attorney's fees associated with the enforcement action and liquidated damages of \$100.00 dollars per each day of noncompliance.

28. The monetary relief ordered in this consent decree constitutes a

debt owed to and collectible by the United States.

**EEOC AUTHORITY**

29. With respect to matters or charges outside the scope of this decree, this decree in no way limits the powers of the EEOC to seek to eliminate employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority, and which do not arise out of the claims asserted in this lawsuit.

**COSTS AND ATTORNEY'S FEES**

30. Except as noted in Paragraph 27 above, each party is responsible for its own costs and attorney's fees.

**SO ORDERED.**

Date: March 22, 2022

s/James T. Moody  
JUDGE JAMES T. MOODY  
UNITED STATES DISTRICT COURT

Re: EEOC v. HZ Ops Holdings, Inc., Case No. 2:20-cv-486-JTM-APR filed in the U.S. District Court for the Northern District of Indiana, Hammond Division.

Dear Ms. Nash:

On behalf of HZ Ops Holdings, Inc., doing business as Popeye's, I express my sincere apology for any bad feelings or sadness caused by withdrawing your job offer and refusing to allow you to begin work in August 2019. You were qualified to work in a food prep position at our Griffith, Indiana restaurant. Popeye's should have scheduled you to work and permitted your job coach to assist you during your training.

I am sorry for any stress this process has caused and genuinely wish you the best in your future endeavors.

Sincerely,

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Robert Purgatorio  
General Counsel  
HZ Ops Holdings, Inc.  
4415 State Hwy. 6  
Sugar Land, TX 77478

**ATTACHMENT A - Letter of Apology**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION**

**EMPLOYEE NOTICE**

**This Notice is Posted Pursuant to a Consent Decree Entered into Between the EEOC and HZ Ops Holdings, Inc. d/b/a Popeye's Resolving a Federal Lawsuit Alleging Disability-Based Discrimination under the Americans with Disabilities Act of 1990 ("ADA").**

Federal law requires that there be no discrimination against any employee because of the employee's race, color, religion, sex, national origin, age (over 40), disability, or genetic information. The ADA prohibits employers from discriminating against employees based on disability. Failing to provide a reasonable accommodation for otherwise qualified applicants or employees with a disability is a form of disability discrimination prohibited by the ADA. The law also prohibits employers and other covered entities from retaliating against employees who have exercised their rights under the ADA.

The EEOC enforces these federal anti-discrimination laws. Employees or applicants who have questions or feel that they have been discriminated against, may contact the EEOC at **Telephone: (463) 999-1240 - TDD: (317) 226-5162 - Toll free: 1-800-669-4000**.

HZ Ops Holdings supports and will comply with such Federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law, or have given testimony, assistance or participated in any investigation, proceeding or hearing conducted by the U.S. Equal Employment Opportunity Commission.

**THIS IS AN OFFICIAL NOTICE AND SHALL NOT BE DEFACED OR REMOVED**

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Robert Purgatorio, General Counsel

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission

101 W. Ohio St., Suite 1900

Indianapolis, Indiana 46204-4203

Telephone: (463) 999-1240 - TDD: (317) 226-5162 - Toll free: 1-800-669-4000.

**This OFFICIAL NOTICE shall remain posted for five years from date of signing.**

**ATTACHMENT B - NOTICE**